79-6370

No.

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

ALBERT ABLE and BETTY ABLE

vs.

STATE OF DELAWARE

On Appeal From The Supreme Court of Delaware

APPENDIX

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April, 1980

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* Throughout this Appendix and the jurisdictional statement, the real names of the parents have been changed to Albert Able and Betty Able and the names of their children have been altered in order to maintain confidentiality. A separate set of all papers reprinted in this Appendix with the original names of the parents and children left unchanged has been filed with the Clerk of this Court, with the request that confidentiality be maintained. Under Delaware law, the proceedings are confidential. 13 Del. Code §§1107(e), 1111.

APPENDIX A

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IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF	§	
	§	
FOUR MINOR CHILDREN	§	
	§	
	§	No. 205, 1978
	§	
	§	
	§	
	§	

Submitted: October 9, 1979
Decided: January 7, 1980

Before HERRMANN, Chief Justice, McNEILLY and HORSEY, Justices.

Upon appeal from Superior Court. Affirmed.

Frederick S. Kessler of Community Legal Aid Society, Inc., Wilmington, for appellants.

Thomas LaPenta, Deputy Attorney General, Wilmington, for appellee.

PER CURIAM:

JAN - 8 1980

It appears to the Court from the briefs and arguments of the parties and the record of this appeal that:

(1) This is an appeal from a Superior Court order terminating parental rights to four minor children for parental unfitness under 13 Del. C. §1103(4).

(2) The respondent parents raise three issues on appeal, first, that 13 Del. C. §1103(4) is unconstitutionally vague in permitting parental rights to be terminated if parents are found to be "not fitted to continue to exercise parental rights;" second, abuse of discretion in terminating parental rights without a finding of present unfitness and when there was a possibility that respondents might become fit some years hence; and third, abuse of discretion in the Trial Judge's denial of respondents' motion to alter or amend the judgment without reasons given.

(3) Following an initial evidentiary hearing on the issue of fitness, the Trial Court found that the parents were then unfit but granted a six months' continuance to determine what, if any, benefit would result from further psychiatric counseling of the parents. Following a second evidentiary hearing some nine months later and the receipt of further psychiatric testimony, the Court found that the parents were "still not ready to assume the role of parents" and hence unfit and further determined that the children were in such great need of parental care that parental rights should be then terminated.

(4) The constitutionality of 13 Del. C. §1103(4) was determined by In re Dingee, Del.Supr., 328 A.2d 139 (1974) and recently affirmed in In re Five Minor Children, Del.Supr., 407 A.2d 198 (1979), and In re Three Minor Children, Del.Supr., ____ A.2d _____ (1979). Dingee held that unfitness does not require precise definition to be a constitutionally sound basis for termination of parental rights. In Three Minor Children, we reaffirmed Dingee, stating that the phrase "not fitted" within §1103(4) has been judicially interpreted to mean "unfitted for parental duties;" and that "[n]o inflexible rule can or should be laid down ... but each case must be decided on its own peculiar facts." In re Three Minor Children, supra, quoting Dingee, 329 A.2d at 140 (1974). These decisions are clearly controlling as to the constitutional challenge.

(5) Parents concede that they are presently incapable of carrying out parental roles and unfit even for custody of their children. However, they contend that by reason of the possibility that they may at some future time become fit, attested to by one expert who found that they had made "some progress," their parental rights should not have been then terminated, and that to do so was an abuse of discretion.

(6) Contrary testimony was given by the other expert who was of the opinion that there had been hardly any progress at all made by the parents in two years of psychotherapy and another year of counseling.

(7) It was not an abuse of discretion for the Court to weigh the "present and urgent" need of the children for parental care against the continuing unfitness of their parents and the uncertainty that they would overcome their unfitness.

(8) The Trial Court did not abuse its discretion in its summary denial of respondent's motion "to alter or amend" the judgment which amounted to a motion for reargument as to issues previously decided by the Court. In any event the issues raised therein are encompassed within those decided by this appeal.

(9) The decision of the Court below complied with the dual requirements for termination of parental rights, namely, (1) the existence of facts sufficient to support a finding of lack of parental fitness and (2) determination that termination of parental rights was in the best interest of the children. See Cline v. Hartzler, Del.Supr., 227 A.2d 210 (1967).

* * * * *

Affirmed.

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DIVISION OF SOCIAL SERVICES OF DELAWARE,	Civil Action No. 7165
Plaintiff,	1 9 7 6
vs.	
[ALBERT ABLE] and [BETTY ABLE]	Termination of Parental Right Hearing - August 23, 1977
Defendants.	

BEFORE: HON. VINCENT A. BIFFERATO, J.

APPEARANCES:

DANA S. SHREVE, ESQ.
Deputy Attorney General
for the State of Delaware.

FREDERICK KESSLER, ESQ.
for the Defendants.

TRANSCRIPT OF COURT'S REMARKS

August 23, 1977
Courtoom No. 3
9:30 o'clock a.m.

PRESENT:

As noted.

* * * * * *

THE COURT: Gentlemen, it's unfortunate that many times the person who has to decide cases such as this are always influenced by their own personal backgrounds, but that's the case. I guess maybe that's something that's built into justice.

Being an Italian, I'm a firm believer that a strong family can take on the world and survive.

In this case, the Court has no doubt that as of March of '76 the [ABLES] were unfit. There's no doubt in my mind about that. Looking at the testimony of Mrs. Kade, [FRED] was unable to walk. Eighteen months old, and still took a bottle. Couldn't chew. Had difficulty speaking. Somebody who allows that does not know how to raise children.

[CANDY] had difficulty sleeping. Constantly disposed of -- threw up food. Parties could not communicate or control [ELIZABETH]

Gentlemen, there's no question in my mind in March of '76 the [ABLES] were unfit to have these children. The Department of Social Services did the correct thing in removing them, and on that date the parties were unfit.

The question is, as Mr. Kessler put it, do we give up on the [ABLES] I think we have to balance, at this point, the interests of the [ABLES] and the interest of the four children.

[CANDY]the oldest child, is eight years old. Four children, [FRED] being the youngest, who's two years old. There comes a time when those four children can no longer stand the haphazard activity and home that the [ABLES] gave them.

The Court is also convinced that the [ABLES] relied upon everybody they came in contact with and leaned upon them. And perhaps it was only Doctor [D___]who first said it when he said that when he first met the [ABLES] they were the most manipulative people he ever met. Listening to Mr. Mercer and Mr. Lattomus testify, the Court can well agree with that.

In '75 they were told in September to make an appointment with the Delaware Guidance. They didn't do so until December, and could not get an appointment until February, and then cancelled out because of snow. According to Mr. Mercer, it was only a threat of snow. Doctor [D___] said it was snowed in, the place was closed. The information could have only come from the [ABLES] And the Court is convinced that they are, perhaps, still are a little bit manipulative, but the Court is also aware that Mrs. [ABLE] had had a tubal ligation. I don't accept the fact that it was coerced by DSS, but, again, a little bit of my background indicates that -- Well, personally, I'm opposed to such things.

But, according to Doctor [D___]the true professional we have in this case, as far as a psychiatrist is concerned, that the [ABLES] are coming along. And should we give up on the at this point? I'm inclined not to, but I'm also inclined to set a limit, because I feel the ages of the children indicate that they need a good home. They're probably in a unique situation in that if the [ABLES] were just a little better, we could have never been here and the children would never have had much of an opportunity. But since we are at this point, we can either say to the[ABLES] improve and you'll get the children back or they'll be put in a better home. So perhaps they have the better of two worlds. But the Court believes that the [ABLES] deserve a second opportunity, but the Court does not believe that the [ABLES] deserve the children at this time. The court is going to continue this case for six months.

I sort of hate to do what Family Court does, because it doesn't resolve anything, but to give everybody an opportunity, the Court's going to take that route. I'm going to continue the case for six months. I'm going to ask Doctor[D___] if he continue to treat these people, that he send me a report in six months evaluating the present condition of the [ABLES] in handling their children. I will also ask the Department of Social Services to keep close contact with the [ABLES] and with Doctor [D___]

Perhaps Doctor [D___]can give the [ABLES] case-worker some insight into dealing with the [ABLES] in the hope that the children can be placed back with the [ABLES] But if it cannot be accomplished within six months, and I hate to set deadlines, but the children have to have some stability, if it can't be accomplished in six months, the Court's going to terminate the parental rights so the children can go out and have a better home life than the [ABLES] could provide them at the present time. And that's the best I can do under the circumstances.

I fully appreciate the [ABLES] feelings. I have no question in my mind that the [ABLES] love the children, but I'm also convinced at the present time that the [ABLES] cannot cope with them. And if some decision cannot be made in six months to improve their homelife, perhaps Doctor [D___]has been able to crack the [ABLES] to the extent of improving them, to make them see their problems. It would be a help. If he has not, then the children are to be placed up for adoption in a suitable home.

Is Mr. [ABLE] presently employed, Mr. Kessler?

MR. [ABLE] Yes, I am, but I paint really --

THE COURT: Mr. Kessler, can you tell me?

MR. KESSLER: I don't know. I know he's working intermittently, that he has part-time jobs.

THE COURT: That's a problem.

MR. [ABLE] : I paint and work for --

THE COURT: All right. The Court's going to reserve decision, basically, in the case and wait for reports both from Doctor [D___] and the Division of Social Services in six months.

If another hearing is required, it will be held. If conditions have not improved, termination rights -- the parental rights will be terminated.

MR. KESSLER: Your Honor, if I may, since the Court has saw fit to retain jurisdiction in this case and since we're faced with the standardized operation policy of the Division of Social Services that limits visitation to one hour a month, I wonder if an order could not be drafted encouraging DSS at least to cooperate with the [ABLES] facilitating more frequent visitations?

THE COURT: I have no problem with that.

Do you have visitation now?

MR. KESSLER: No.

THE COURT: No visitation at all?

MR. KESSLER: Haven't had any since May of '76.

THE COURT: Well, I think Doctor [D___] should be a part of that decision as well. Something should be done in that light but, at the same time, if it's going to be upsetting to the child

MR. KESSLER: I understand.

THE COURT: -- the Court's going to frown upon it.

If you cannot work something out with the Division of Social Services, would you please let me know?

MR. KESSLER: Thank you, Your Honor.

THE COURT: Court will stand in recess.

APPENDIX C

SUPERIOR COURT
OF THE
STATE OF DELAWARE

VINCENT A. BIFFERATO
JUDGE

COURT HOUSE
WILMINGTON, DE. 19801

Submitted: May 3, 1978
Decided: May 31, 1978

Re: In the Matter of Four Minor Children
Civil Action No. 7165, 1976

Roger A. Akin, Esq.
Assistant Attorney General
State Department of Justice
State Office Building
820 French Street
Wilmington, Delaware 19801

Frederick S. Kessler, Esq.
Attorney for Respondents
Community Legal Aid Society, Inc.
103 West Seventh Street
Wilmington, Delaware 19801

Gentlemen:

In August, 1977, the Court heard testimony on the petition of the Division of Social Services of Delaware to terminate the parental rights of the father and mother over their four minor children. At the conclusion of the hearing, the Court ruled that at the time the children were placed in the care of the Division of Social Services the mother and father were unfit parents, and that their dependency was so great that, even in August, 1977, they should not have custody of the children. However, since they were being treated by a psychiatrist, the Court continued the case for six months to ascertain whether continued psychiatric treatment would be of benefit to the parents. A second hearing was held on April 28, 1978. At this hearing the Court heard testimony from two psychiatrists, Dr. Keeler and Dr. Davis. The testimony of each indicated clearly that the parents are still not ready to assume the role of parents to these four minor children. Their dependency needs are still so great that they cannot cope with the problems of raising four minor children, although Dr. Davis indicates that he believes, with time and further treatment, the parents could assume their parental duties. However, at this time the needs of the children are so great that their best interests must be considered first.

The children have been so damaged by the lack of parental care given them by the parents that there is a present and urgent need for a normal caring and loving home life so that they can develop into normal children and then adults. Long-term foster care is not an acceptable solution for the children. Therefore, their needs cannot wait until their parents are acceptable and able to fulfill their role as parents.

Based upon the testimony presented during the course of the hearings, the Court finds that the best interests of the children at the present time require termination of the parental rights of the father and mother.

IT IS SO ORDERED.

Very truly yours,

Vincent A. Biffanto

VAB:g

cc: Prothonotary
Law Library
Mr. Fred Kirch
File

APPENDIX D

Mandate

THE SUPREME COURT OF THE STATE OF DELAWARE

TO THE HONORABLE THE JUDGES OF

The Superior Court of the State of Delaware

in and for New Castle County:

Greeting:

WHEREAS, before you or some of you in a cause entitled as follows:

IN THE MATTER OF FOUR MINOR CHILDREN

C.A. No. 7165, 1976

a certain judgment or order was entered on the 20th day of June 1978, to which reference is hereby made; and

WHEREAS, by appropriate proceedings the said cause was duly appealed to this Court, and after hearing has been finally determined, as appears from the opinion of this Court filed in the cause decided January 7, 1980 on January 8 1980, a certified copy of which is attached hereto;

ON CONSIDERATION WHEREOF IT IS ORDERED AND ADJUDGED that the said judgment or order be and it is hereby affirmed.

WITNESS the Honorable D. L. Herrmann our Chief Justice, at Dover, the First day of January, A. D. 19 80

Issued January 29, 19 80

Clerk of the Supreme Court.

Supreme Ct. No. 205, 1978

COPY

APPENDIX E

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[ALBERT ABLE]
and [BETTY ABLE]

Respondents-Below,
Appellants,

vs.

DIVISION OF SOCIAL SERVICES,

Petitioner-Below,
Appellee.

No. 205, 1978

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NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that [ALBERT ABLE] and [BETTY ABLE], the Appellants in this Court, hereby appeal to the Supreme Court of the United States from the final judgment and mandate of this Court of January 29, 1980. Such judgment affirmed the judgment of the Superior Court, in and for New Castle County, terminating their parental rights in their four children.

The appeal is taken pursuant to 28 U.S.C. §1257(2).

Gary A. Myers

GARY A. MYERS, ESQUIRE
Attorney for Appellants
Staff Attorney
Community Legal Aid Society, Inc.
144 East Market Street
Georgetown, Delaware 19947

DATED: April 1, 1980

AFFIDAVIT OF SERVICE

UNDER SUPREME COURT RULE 33 (3) (c)

I, GARY A. MYERS, attorney in the office of Community Legal Aid Society, Inc., 144 East Market Street, Georgetown, Delaware and attorney of record for [ALBERT ABLE] and [BETTY ABLE], the Appellants herein, state under oath that on April 3, 1980, I served the attached Notice of Appeal on the Appellee, the Division of Social Services of the Delaware Department of Health and Social Services, by mailing three copies, in a duly addressed envelope, with first class postage prepaid, to its attorney of record as follows:

Thomas LaPenta, Esquire
Deputy Attorney General
Department of Justice
State of Delaware
State Office Building
820 North French Street
Wilmington, Delaware 19801

Gary A. Myers
GARY A. MYERS, ESQUIRE

SWORN TO AND SUBSCRIBED before me at Georgetown, Delaware, this 3rd day of April, 1980.

Brenda S. Short
Notary Public

FILED

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF:	*	7165, Civil Action 1976
[CANDY ABLE],	*	
[DOROTHY ABLE],	*	
[ELIZABETH ABLE],	*	
[FRED ABLE],	*	
	*	
Four Minor Children.	*	

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is given that [ALBERT ABLE] and [BETTY ABLE], the Respondents in this Court, hereby appeal to the Supreme Court of the United States from the final judgment and mandate of the Supreme Court of Delaware dated January 29, 1980 which affirmed this Court's order terminating their parental rights in their four children. The Supreme Court issued an opinion affirming this Court's order on January 7, 1980.

The appeal is taken pursuant to 28 U.S.C. §1257(2).

Gary A. Myers

GARY A. MYERS, ESQUIRE
Attorney for Respondents
Staff Attorney
Community Legal Aid Society, Inc.
144 East Market Street
Georgetown, Delaware 19947

DATE: April 1, 1980

PROTHONOTARY

APR 2 1 4 27 PM '80

FILED

AFFIDAVIT OF SERVICE

UNDER SUPREME COURT RULE 33 (3) (c)

I, GARY A. MYERS, attorney in the office of Community Legal Aid Society, Inc., 144 East Market Street, Georgetown, Delaware and attorney of record for [ALBERT ABLE] and [BETTY ABLE], the Appellants herein, state under oath that on April 3, 1980, I served the attached Notice of Appeal on the Appellee, the Division of Social Services of the Delaware Department of Health and Social Services, by mailing three copies, in a duly addressed envelope, with first class postage prepaid, to its attorney of record as follows:

Thomas LaPenta, Esquire
Deputy Attorney General
Department of Justice
State of Delaware
State Office Building
820 North French Street
Wilmington, Delaware 19801

Gary A. Myers
GARY A. MYERS, ESQUIRE

SWORN TO AND SUBSCRIBED before me at Georgetown, Delaware, this 3rd day of April, 1980.

Brenda S. Short
Notary Public

APPENDIX F

UNITED STATES CONSTITUTION, amendment XIV, section 1, clause 3:

"nor shall any state deprive any person of life, liberty, or property, without due process of law;"

13 DELAWARE CODE §§ 1101-1113:

§ 1101. Definitions.

As used in this chapter:

(1) "Abandoned" shall be interpreted as referring to any child who, for a period of 6 months, has not received any regular and reasonable financial help from his parent or parents or any person having parental rights or responsibility and on whose behalf no substantial contacts have been initiated by his parent or parents or any person having parental rights or responsibility during that period.

(2) "Authorized agency" means any agency licensed by the Department of Health and Social Services of this State to place children for adoption, or any agency duly approved, certified, recognized or licensed by the proper authority of any other state in which that agency is located to place children for adoption.

(3) "Child" means any male or female who has not attained his or her 18th birthday.

(4) "Mentally incompetent" shall be interpreted as referring to a parent who is unable to understand and discharge the natural and regular obligations of care and support of a child by reason of mental illness, psychopathology, mental retardation or mental deficiency.

(5) "Natural father" means the biological male parent of a child. (48 Del. Laws, c. 135, § 1; 13 Del. C. 1953, § 1101; 50 Del. Laws, c. 17, § 1; 53 Del. Laws, c. 102, §§ 1, 2; 57 Del. Laws, c. 363, § 8; 58 Del. Laws, c. 511, § 22; 59 Del. Laws, c. 466, §§ 14, 15; 61 Del. Laws, c. 178, § 2.)

§ 1102. Jurisdiction and venue.

(a) The Superior Court shall have jurisdiction of proceedings under this chapter to terminate parental rights.

(b) A petition for termination of parental rights may be filed in the Superior Court of any of the following counties:

(1) The county in which the petitioner resides;

(2) The county in which the organization having legal or physical care, custody or control of the child involved is located;

(3) The county in which the child involved is located.

(c) Whenever the Superior Court shall assume jurisdiction of a child for the purposes of this chapter, it shall be deemed to have retained jurisdiction for the purposes of proceeding under Chapter 9 of this title relating to adoption. (48 Del. Laws, c. 135, §§ 2, 5; 13 Del. C. 1953, § 1102; 50 Del. Laws, c. 17, § 1; 57 Del. Laws, c. 363, § 9; 57 Del. Laws, c. 402, § 2.)

§ 1103. Grounds for termination of parental rights.

The procedure for termination of parental rights for the purpose of adoption or, if a suitable adoption plan cannot be effected, for the purpose of providing for the care of the child by some other plan which may or may not contemplate the continued possibility of eventual adoption, may be initiated whenever it appears that:

(1) The parent or parents of any child, or the person or persons or organization holding parental rights over such child, desires to relinquish such parental rights; or

(2) Any child has been abandoned; or

(3) The parent or parents of any child or any person or persons holding parental rights over such a child are found by the Court to be mentally incompetent and, from evidence of 2 qualified psychiatrists selected by the Court, found to be unable to discharge parental responsibilities in the foreseeable future. The Court shall appoint a licensed attorney as guardian ad litem to represent the alleged incompetent in the proceeding; or

(4) The parent or parents of any such child, or any person or persons or organization holding parental rights over such child are not fitted to continue to exercise parental rights; or

(5) Both parents of a child are deceased.

Unless adoption is contemplated, the termination of 1 parent's parental rights by the other parent shall not be granted if the effect will be to leave only 1 parent holding parental rights, unless the Court shall find the continuation of the rights to be terminated will be harmful to the child. (48 Del. Laws, c. 135, § 2; 13 Del. C. 1953, § 1103; 50 Del. Laws, c. 17, § 1; 50 Del. Laws, c. 534, § 2; 53 Del. Laws, c. 102, § 3; 56 Del. Laws, c. 301, § 2; 59 Del. Laws, c. 466, § 16; 60 Del. Laws, c. 241, § 9.)

§ 1104. Persons eligible to petition for termination of parental rights.

A petition for the termination of parental rights may be filed by any of the following:

(1) The mother or the natural father, or both, of a child born out of wedlock;

(2) Both parents of a child born in wedlock if both parents are living;

(3) The surviving parent of a child born in wedlock, if 1 parent is dead;

(4) The mother or the natural father, or both, if the mother's legal husband at the time of the conception or birth of the child was not the natural father of the child. In the absence of evidence to the contrary, a notarized statement of the legal husband that he is not the father of the child shall be prima facie proof thereof;

(5) One parent alone if the other parent is incompetent by virtue of mental illness or mental retardation, or has abandoned the child, or is not fit to continue to exercise parental rights.

(6) A blood relative of a child whose parents are deceased or who are incompetent by virtue of mental illness or mental retardation, or who have abandoned the child, or who are not fitted to continue to exercise parental rights;

(7) An authorized agency or the State Department of Health and Social Services. (48 Del. Laws, c. 135, § 3; 13 Del. C. 1953, § 1104; 49 Del. Laws, c. 57, § 1; 50 Del. Laws, c. 17, § 1; 50 Del. Laws, c. 534, § 2; 59 Del. Laws, c. 466, § 17; 60 Del. Laws, c. 241, § 10.)

§ 1105. Contents of petition.

(a) The petition for the termination of parental rights shall state the:

(1) Name and place of residence of the petitioner or petitioners;

(2) Name, sex and date of birth of the child;

(3) Relationship of the petitioner or petitioners to the child or the fact that no such relationship exists;

(4) The names and addresses of the parents of the child if born in wedlock;

(5) If the child was born out of wedlock, the name and address of the mother and her marital status at the time of the child's conception and birth, and, in the event she was married at the time of the child's conception or birth, the name and address of the mother's husband at those times, and an affidavit by the mother setting forth either (i) the name and last known address of the natural father, or (ii) a statement that the mother knows the name of the natural father but is unwilling to disclose the name of the natural father, or (iii) a statement that the mother does not know the name of the natural father, or (iv) the name of the natural father, and a statement that the mother has never known his address;

(6) Name and last known address of the person or persons or organization holding parental rights and the name and address of the person or persons or organization having the care, control or custody of the child;

(7) Grounds for termination of parental rights;

(8) Name and address of the person or persons or of the authorized agency or officer thereof or the State Department of Health and Social Services or officer thereof for whom or for which parental rights are requested;

(9) In addition to other pertinent information, the petition shall, if the name and/or address of the natural father is not included, furnish detailed information concerning the efforts made to identify and locate the natural father so as to enable the Court to determine what further steps, if any, should be taken.

(b) Any consents required in § 1106 of this title shall accompany the petition as exhibits.

(c) In any case in which a petition for the termination of parental rights has been filed and an authorized agency or the State Department of Health and Social Services is a party to the proceedings, there shall be attached to the petition a social report. (48 Del. Laws, c. 135, § 4; 13 Del. C. 1953, § 1105; 50 Del. Laws, c. 17, § 1; 59 Del. Laws, c. 466, §§ 18, 19; 60 Del. Laws, c. 241, §§ 11, 12.)

§ 1106. Consent requirements; waiver of notice.

In the case of proceedings based on § 1103(1) of this title:

(1) A petition for the termination of parental rights shall be accompanied by the duly notarized consent in writing of the person or persons or organization holding parental rights;

(2) The consent provided for in subdivision (1) shall be required from:

a. Both parents of a child born out of wedlock; provided, however, that the consent of the alleged natural father need not contain an admission that he is the father. In the event that the named natural father disclaims paternity, an affidavit signed by him to that effect shall be attached to the petition in lieu of a consent from the natural father. It is further provided that in the event of a petition containing statements described in § 1105(a)(5)(ii), (iii) or (iv) of this title, after a hearing in which it is established on the record that the mother and father of the child are not living together as husband and wife openly and that they have not done so nor married since the birth of the child, the Court may, following consideration of the social report, dispense with the requirement of the father's consent in compliance with § 1113 of this title.

b. Both parents of a child born in wedlock except as provided in subparagraph c. if both parents are living, or from the survivor, if 1 is deceased, regardless of the marital status of the parents at the time the petition is presented;

c. The mother and the natural father, if the mother's legal husband at the time of the conception or birth of the child was not the natural father of the child. In the absence of evidence to the contrary, a notarized statement of the legal husband that he is not the father of the child shall be prima facie proof thereof. If such a notarized statement of the legal husband cannot be obtained, a notice of hearing shall be sent to him as provided in § 1107 of this title. The consent of the natural father is subject to paragraph a. above;

d. Any other person or persons or organization holding parental rights;

e. One parent alone if the other parent is incompetent by reason of mental illness or mental retardation, or has abandoned the child, or is not fitted to continue to exercise the parental rights.

(3) If the individual in whom the right to consent exists is under the age of 21 years, this fact shall not be a bar to the giving of consent nor render the consent when given invalid;

(4) Every petition shall be accompanied by a formal written consent executed by the person or persons or organization for whom or for which parental rights are requested;

(5) If the person or persons or organization holding parental rights wish to waive their right to any and all notice of hearing or right to appear at such hearing, the petition shall be accompanied by a notarized statement to this effect executed by the person or persons or organization holding parental rights. (48 Del. Laws, c. 135, § 6; 13 Del. C. 1953, § 1106; 50 Del. Laws, c. 17, § 1.)

(6) Consent by the natural father may be executed either before or after the actual birth of the child involved. (48 Del. Laws, c. 135, § 6; 13 Del. C. 1953, § 1106; 50 Del. Laws, c. 17, § 1; 59 Del. Laws, c. 466, §§ 20, 21; 61 Del. Laws, c. 178, § 3.)

§ 1107. Hearing procedure; notice of hearing; report.

(a) When a petition for the termination of parental rights is filed in which an authorized agency or the State Department of Health and Social Services is a party to the proceedings, the Court shall set a date for a hearing thereon, and shall cause notice of the time, place and purpose of the hearing to be served upon the parent or parents, person or persons or organization holding parental rights at his or their last known address; provided, however, no such notice shall be necessary if a waiver executed by the parent or parents, person or persons or organization holding parental rights has been filed with the petition, in accordance with the provisions of § 1106(5) of this title. The Court may require notice to be served upon any other person or organization.

(b) If the Court shall find that personal service within the State cannot be accomplished upon the parent or parents, person or persons or organization holding parental rights, the Court shall then cause notice of the time, place and purpose of the hearing to be published once a week, for 3 successive weeks, in such newspapers of the county, 1 or more, as the Court may judge best for giving the parent or parents, or person or persons or organization holding parental rights notice, the formal wording of said notice to be approved by the Court. Such publication shall constitute conclusive evidence of service and a hearing will then proceed at the time and date set with or without the appearance of the parent or parents, person or persons or organization so notified. Publication shall also be made in the locality in which the parent or parents, person or persons or organization holding parental rights is believed to be located if different from the county where the publication just described has been caused. If any publication is ordered pursuant to this subsection, the Court shall also order that the Prothonotary, at least 3 weeks prior to the hearing, shall send by regular and registered or certified mail to the parent or parents, or person or persons or organization holding parental rights, at the address or addresses given in the petition, a copy of the same notice, or a similar notice of the time, place and purpose of the hearing.

(c) Personal service at any time prior to the hearing shall be sufficient to give jurisdiction.

(d) When a petition for termination of parental rights is filed, and an authorized agency or the Department of Health and Social Services, Division of Social Services, is not a party to the proceedings, the Court shall, before any hearing, order a social study and report on the petition by an authorized agency or by the Department of Health and Social Services, to be filed within 4 months, subject to such additional time as the Court shall determine is reasonably required. The Court shall set a date for hearing to take place after the report is to be filed and notice shall be accomplished as outlined above. Any social report filed with the petition, or subsequently, as described above in this subsection, shall include the information specifically referred to in § 1105(c) of this title, where indicated.
(59 Del. Laws, c. 466, § 22; 60 Del. Laws, c. 241, § 13.)

(e) All hearings shall be held before the Court privately, but for reasons appearing sufficient to the Court the hearing in any particular case may be public. (48 Del. Laws, c. 135, § 6; 13 Del. C. 1953, § 1107; 50 Del. Laws, c. 17, § 1.)

§ 1108. Order of termination and transfer of parental rights.

(a) Should the Court find the termination of existing parental rights and their transfer to be in the best interests of the child, it shall make an order terminating such rights in the parent or parents, person or persons or organization in which they have existed and transferring them to some other person or persons or authorized agency or the State Department of Health and Social Services as may, in the opinion of the Court, be best qualified to receive them.

(b) If a child is abandoned by 1 parent only, the rights of such parent may be terminated without affecting the rights of the other.

(c) In the case of the termination of the parental rights of 1 parent only, for the purposes of adoption by a stepparent, upon the finding described in paragraph (a) of this section, the Court may, in its discretion, in lieu of a final order enter an interlocutory order which the Court shall make final at the completion of adoption proceedings, provided that any such interlocutory order which does not become final within 18 calendar months of the issuance thereof shall, upon the expiration of such 18 calendar month period, become null and void. (48 Del. Laws, c. 135, § 7; 13 Del. C. 1953, § 1108; 50 Del. Laws, c. 17, § 1; 56 Del. Laws, c. 300.)

§ 1109. Appeal.

The petitioner, if the petition is not granted; or any person or organization whose parental rights have been terminated by the order, may, at any time within 30 days after the making and entry of such decree, take an appeal therefrom to the Supreme Court. (48 Del. Laws, c. 135, § 8; 13 Del. C. 1953, § 1109; 50 Del. Laws, c. 17, § 1.)

§ 1110. Court costs.

All Court costs including costs of giving notice and advertising shall be paid by the petitioners. (13 Del. C. 1953, § 1110; 50 Del. Laws, c. 17, § 1.)

§ 1111. Confidential nature of records.

All records and dockets pertaining to any termination shall be confidential and shall be kept by the Prothonotary in a sealed container which shall be opened only by the order of a Judge of the Superior Court.

Anyone wishing to inspect any of the papers filed in connection with any termination shall petition a Judge of the Superior Court setting forth the reasons for the inspection. The Judge may refer the petition to the State Department of Health and Social Services or to an authorized agency for investigation and report. If, in the opinion of the Court, the information is necessary, and the interests of the child, the natural parents or the adoptive parents will not be prejudiced by its disclosure, the Court shall issue an order permitting the release of the information and setting forth the terms under which it shall be released. (13 Del. C. 1953, § 1111; 50 Del. Laws, c. 17, § 1; 57 Del. Laws, c. 402, § 2.)

§ 1112. Effect of termination of parental rights.

Upon the issuance of an order terminating the existing parental rights and transferring such parental rights to another person or organization, the effect of such order shall be that all of the rights, duties, privileges and obligations recognized by law between the person or persons whose parental rights are terminated and the child shall forever thereafter cease to exist as fully and to all intents and purposes as if the child and the person or persons whose parental rights have been terminated were and always had been strangers. The person or organization to whom said parental rights are transferred shall have custody and guardianship of the child but such custody and guardianship shall terminate automatically upon the entry of another order transferring parental rights or on an order of adoption. (13 Del. C. 1953, § 1112; 53 Del. Laws, c. 102, § 4.)

§ 1113. Interpretation.

This chapter is designed to achieve without undue delay the paramount objective of the best interest of the child, and all questions of interpretation shall be resolved with that objective in mind. (59 Del. Laws, c. 466, § 23.)